General Assembly

Distr.: General
27 February 2015

English only

Human Rights Council
Twenty-eighth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Union of Arab Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-03798 (E)
1503798

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The Situation of Arbitrary arrests and enforced disappearances in Iraq

As of February 2015, thousands of Iraqi people still in unknown persons or detention centres. The well-known practice of arbitrary arrests, unlawful detentions, enforced disappearances, torture and other forms of ill-treatment in Iraq constitutes a serious violation of the international human rights law, international criminal law and international humanitarian law. The Iraqi government and its state agents consistently implement policies and carry out actions that infringe the right to liberty and security of a person, the right to a fair trial, including habeas corpus and an absolute prohibition of torture and ill-treatment. These violations are widespread and systematic. The perpetrators know that their conduct is part of an attack against civilians, which amount to crimes against humanity in accordance with international law. The international community should undertake immediate and effective measures to halt this practice and to ensure that the perpetrators brought to justice and victims restored in rights and compensated.

Systematic and Widespread Unlawful Arrests

An alarmingly increasing rate of targeted and random arrests without warrant, charges or based on suspicion of involvement in terroristic activity further agitate the sectarian tensions and cause more violence in Iraq. The current Iraqi administration continues this misconduct in a systematic and widespread manner. The arrests are often indiscriminate in nature and represent a regular well-known practice with the excessive use of force, including lethal force during the arrest raids, especially those conducted by the Minister of Interior, Counter-Terrorism Directorate and the Ministry of Defence. The majority of the arbitrary arrests are sectarian and politically motivated under the pretext of the fight against terrorism. The sectarian nature of these attacks against certain religious group represents a discrimination based on distinctive characteristics. The perpetrators are well aware of the sectarian policy. The afore-mentioned fulfil the elements of a crime against humanity.

The arrests in the interest of the supposed public safety and security target either a specific political figure or a particular group. Several non-governmental organisations, pointed out numerously through urgent appeals, written statements and press releases, the majority of arbitrary arrests based on the prefabricated charges of terrorism were undertaken with a political agenda in mind[1]. Even those persons who were part of the so-called political process were targeted seemingly on a sectarian basis[2].

The Iraqi society also suffers from massive arbitrary arrests. The following examples give a clear snapshot of the situation: the arrest of approximately 1,500 persons following the direct order of al-Maliki[3], indiscriminate arrest of at least 4000 persons in one single act before the summit of the Arab League in March 2012.

Further alarming waves of arrests occurred in August 2013 under the campaign officially named "Thár al-Shuhadá" or "Martyrs' Revenge". More than 1,000 persons arrested and dozens killed in the operation around Baghdad and Al-Anbar and other provinces as "terrorists", which also undermines the presumption of innocence. "The name of the campaign itself – 'Martyrs' Revenge' is indicative of Maliki's promotion of revenge and not only gives a sense of justification for the mass arrests being executed but incites sectarian support for a highly unjustly-executed operation"[4] [5]

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[1] - See http://www.gicj.org/index.php?option=com_frontpage&Itemid=42

[2] - for example in the cases of Ahmed al-Alwani (Member of the Parliament), Rafa al-Essawi (then Finance Minister), Tariq al-Hashemi (Vice-President).

[3] "*Iraq: Mass Arrests, Incommunicado Detentions*", Human Rights Watch, May 2012 at http://www.hrw.org/news/2012/05/15/iraq-mass-arrests-incommunicado-detentions

[4] "*GICJ appeals to High Commissioner for Human Rights and Special Rapporteurs on the mass human rights violations in Iraq*", August 2013 at: http://gicj.org/index.php?option=com_content&task=view&id=326&Itemid=197

[5] Ms. Etab Al-Douri, a Member of the Parliament, expressed her belief that those arrested are innocent and stressed that the campaign is strategically sectarian in nature. She stated that if one examines the geographic

Detention in Violation of Due Process and Fair Trial Guarantees

The illegal invasion to Iraq resulted in the destruction of the entire Iraqi judicial system. '..the dismantling of state institutions under the occupation and methods introduced by the US-Forces, who established the Special Police Commandos and set up prisons like Abu Ghraib.'[6] The corruption in the administration of justice undermines the credibility of justice system and casts doubts on conviction of persons accused in such a serious crime as an act of terrorism. The interference of the executive in the affairs of the judiciary undermines one of the core elements of a democratic state such as separation of powers. During the 79th anniversary of the Iraqi Bar Association The Iraqi Prime Minister expressed congratulations to those lawyers who refuse to represent the 'terrorist' detainees and clear threats to those lawyers who defend them is one of the outrageous examples of public interference.[7]

Serious violations of the arrested person's rights provided for in the International Covenant on Civil and Political Rights (ICCPR) and other core international instruments that Iraq has ratified represent regular and widespread practice. The fate of an arrestee can be easily predicted in advance: unlawful detention, torture and/or ill-treatment and questionable sentence. Following the arbitrariness of arrests, the detainees face abuse of due process and fair trial guarantees. There are a number of complaints on lengthy and unreasonable delays in informing the detainees about charges against them. The practice of torture and ill-treatment during interrogations in the places of detention run by the Ministry of Interior and Anti-Terrorism Directorate are documented. The confessions obtained by torture and ill-treatment are often used as evidence in the court to convict in the absence of credible evidentiary material. According to the Iraqi law, the accused are provided with free legal representation, but there are complains that the accused meet the state-appointed lawyers for the first time at the court proceeding.
These allegations represent serious violations of customary international law, the provisions of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. The most disappointing is that, as noted by the report of the UN Mission in Iraq, the government of Iraq fails at making significant progress in implementing the legal, institutional and policy reforms to ensure the respect for the provisions of the Iraqi Constitution and international human rights law.[8]

Enforced Disappearances and Secret Detentions

The Convention for the Protection of All Persons from Enforced Disappearance, which Iraq has ratified in 2010, provides that *"no one shall be subjected to enforced disappearance"* and that *"no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance."* According to the Rome Statute of the International Criminal Court *"when committed as part of a widespread or systematic attack directed at any civilian population, a "forced disappearance" qualifies as a crime against humanity, and thus is not subject to a statute of limitations"*.

The situation in Iraq is dramatic. NGOs continuously emphasises how widespread and systematic is this misconduct and its impact on the Iraqi society.[9] Rough estimates indicate more than one million persons have disappeared in Iraq. According to the UN data, the country has the most disappeared in the world.[10]

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location of the campaign, it becomes evident that it is systematically concentrated in particular sect-dominated areas, and that a review of past operations and campaigns demonstrates that it : always certain sects that are targeted. An interview given to Al-Sharqiya News on 20 August 2013.

[6] *"NGOs urge UN to stop death penalty in Iraq: the Government of Iraq can no longer arbitrarily execute people at will and with impunity"*. May 2013 at:
http://gicj.org/index.php?option=com_content&task=view&id=309&Itemid=197

[7] *"Iraq - Continuous interference of the executive in the judiciary"*, at:
http://gicj.org/index.php?option=com_content&task=view&id=116&Itemid=52

[8] *"Report on Human Rights in Iraq: January-June 2013"*, UNAMI and UN OHCHR, August 2013, Baghdad.

[9] *"Iraq- Attacks and disappearances involving the Ministry of Higher Education Personnel"*, November 2012 at:
http://gicj.org/index.php?option=com_content&task=view&id=122&Itemid=52

[10] The ICRC's Paul-Henri Arni said that Iraq after three conflicts – a war with Iran in the 1980s, the first Gulf War in 1991 and the U.S.-led operation in 2003 – was probably facing the highest number of missing people in the world. *"Accounting for missing people*

The problem of the disappeared and/or missing persons in Iraq is treated with secrecy by the authorities and the given figures are downplayed and very unreliable. Iraq says it has no central database to try to link the unidentified bodies that have been buried anonymously with the list of names of the missing. Moreover, the victims' families are often reluctant to claim the bodies from the six Medico-Legal Institutes around the country for fear of reprisals. Even looking for missing relatives in hospitals is not safe. In addition, there are reports of bodies that end up buried in mass graves and are not recorded at the morgues.

Disappearances still occur on a very regular basis in Iraq. The most important parties involved now are the Iraqi army, police, various militias and terrorists group. 'Often, forced disappearance implies murder. The victim in such a case is first abducted, then illegally detained and often tortured; the victim is then killed, and the body is then hidden. Typically, a murder will be surreptitious, with the corpse disposed of in such a way as to prevent it ever being found, so that the person apparently vanishes. The party committing the murder has deniability, as there is no body to prove that the victim has actually died.'[11]

Moreover, the growing phenomenon of secret prisons in Iraq, which even international organizations have failed to locate, leads to a large number of reported and unreported cases of forced disappearances. "There is no safe place in Iraq. People can be disappeared and sent to secret, illegal detention centres anywhere in the country, without the knowledge of the family or the person's lawyer……Many are assassinated and buried in secret. Many others are charged with trumped-up terrorism charges."[12] According to the UN Human Rights Council, "secret detention amounts to an enforced disappearance."[13]

We call on:

- the Iraqi authorities to undertake genuine actions to ensure the implementation of its international obligations under both international humanitarian law and human rights law;
- the Working Group on Arbitrary Detention, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to visit Iraq and fully investigate all cases of arbitrary detention, torture and ill treatment;
- the UN and the Human Rights Council to ensure that all human rights violations in committed in Iraq during the sanction, and since the 2003 invasion and occupation to be investigated by an international independent body;
- The reinstatement of the position of a Special Rapporteur for Iraq.

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is vital for stability in a post-war scenario – ICRC". James Kilner, AlertNet London, November 2009 at: http://www.reliefweb.int/rw/rwb.nsf/db900SID/MUMA-7XS4PY?OpenDocument

[11] "*Enforced Disappearance: The Missing Persons of Iraq*", Dirk Adriaensens at: http://www.globalresearch.ca/enforced-disappearance-the-missing-persons-of-iraq/22164

[12] "*Iraq: Enforced disappearances – "a long-term challenge"* at http://www.irinnews.org/report/91622/iraq-enforced-disappearances-a-long-term-challenge

[13] In addition, "secret detention effectively takes detainees outside the legal framework and renders safeguards contained in international instruments meaningless, including, importantly, that of *habeas corpus*". See: Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Document A/HRC/13/42, May 2010.